

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of the City of Santa Rosa for Approval to Construct a Public Pedestrian and Bicycle At-Grade Crossing of the Sonoma Marin Area Rail Transit ("SMART") Track at Jennings Avenue Located in Santa Rosa, Sonoma County, State of California.

Application No. 15-05-014
(Filing date May 14, 2015)

**REPLY TO COMMENTS
OF THE SAFETY AND ENFORCEMENT DIVISION
ON THE PROPOSED DECISION OF ALJ MCKINNEY**

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As an individual and representing
the Sonoma County Transportation
and Land Use Coalition, the Sierra
Club, and the Friends of SMART

Date: August 15, 2016

I.

INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Rules 1.2 and 14.3, the Sonoma County Transportation and Land Use Coalition, the Sierra Club, the Friends of SMART, and Stephen C. Birdlebough (hereinafter “SCTLC”) hereby respectfully submit this reply to comments by the Safety and Enforcement Division (hereinafter “SED”) on ALJ McKinney’s Proposed Decision, filed July 18, 2016. The SCTLC supports the Proposed Decision to grant the Application for an at-grade crossing.

II.

BECAUSE EACH RAILROAD GRADE CROSSING IS UNIQUE THE PROPOSED DECISION DOES NOT “HAMSTRING” SED

The SED comments claim that the *wording* of the Proposed Decision (PD) would “hamstring” the ability of the Commission to require future grade separations.¹ However, the facts regarding every railroad crossing are unique, and according to the SED witness, “every crossing is approached individually.”² The approval of an at-grade pedestrian-bicycle crossing at Jennings Avenue does not lower the legal standards for other cities contemplating railroad crossings. Few crossings are likely to be proposed at locations with an eleven-decade documented history of continuous, frequent, unobstructed use. Most crossings would not involve an aqueduct and adjacent stream that make a pedestrian undercrossing cost-prohibitive. The footprint of many crossings would not be so cramped as to require switchbacks creating

¹ See, *SED Comment*, p. 3.

² RT 145:12-21

safety concerns and discouraging potential users.³ Favorable terrain also permits some pedestrian grade separations to be designed without the lengthy or steep approach ramps required in this case. The unique *facts* of the situation at Jennings Avenue are the core of the PD, not its wording.

It is also unlikely that the PD would encourage applications for at-grade pedestrian-bicycle crossings near existing grade separations.⁴ Such proposals would entail significant costs, with a need to show how a new crossing would enhance the safety of users.

III.

THE EVIDENCE DEMONSTRATES CONVINCINGLY THAT A JENNINGS AT-GRADE CROSSING WILL IMPROVE SAFETY

SED comments urge adoption of a safety analysis that ignores the actual dangers people will face if Jennings Ave. remains closed at the railroad tracks.⁵ The PD properly weighs the safety issues affecting the City's application.

Without an authorized and safe railroad crossing at Jennings, the City's plan for a safe east-west bicycle route across town on lightly-traveled streets cannot be fulfilled. People crossing the right of way on foot or bicycle would have the options of risking the heavily trafficked Guerneville Road or College Avenue at-grade crossings, or risking a more or less

³ See, e.g. statement of Ms. James: "A bridge overcrossing presents additional safety risks as well. We will be at risk of skateboards and bicycles speeding down ramps. And the length and switchbacks of the proposed bridge make it impossible to see straight through especially at night to check for any potential threats to personal safety before starting to cross." RT PPH 32:16-23.

⁴ *SED Comment*, pp. 4-5.

⁵ *SED Comments*, pp. 7 & 13, fn. 22 regarding *City of San Mateo v. SoPac Transp. Co.* D.82-04-033. The differing safety and fiscal dynamics posed by pedestrian and vehicular crossings also deserve consideration. A pedestrian crossing at Jennings Ave. with warning devices will tend to reduce trespassing, whereas the motor vehicle traffic addressed in the *San Mateo* case would rarely trespass on the railroad right of way. Also, limiting the number of vehicular at-grade crossings imposes relatively less inconvenience on drivers, and concentrates traffic at the remaining crossings, making it more likely that in the long run a grade separation will be supported politically and financially.

difficult trespass directly across the tracks, depending on the condition of fencing along the railroad right-of-way.

SED is dismissive of SMART's support for the City's application.⁶ however, even a private freight railroad such as Union Pacific will support the creation of a new at-grade pedestrian crossing of its main line in appropriate circumstances. See, settlement in *San Luis Obispo County, San Miguel Pedestrian Crossing*, A.04-07-001 (July 12, 2007), page 7.

IV.

THERE IS NO OBJECTIVE EVIDENCE THAT THE JENNINGS AVENUE AREA POSES UNUSUAL RISKS FOR AN AT-GRADE CROSSING

Both Commission precedent and the SED principal witness agree that, regardless of the type of crossing, absolute safety can never be guaranteed.⁷ Before the possibility of an MTC grant emerged, the SED staff had engaged with City staff in detailed discussions about the design of an at-grade pedestrian-bicycle crossing at Jennings Avenue in anticipation of an application by the City.⁸ Seven at-grade crossings accommodating double-tracking of the SMART right of way from Guerneville Road to Third Street in Santa Rosa were approved by SED in 2012.⁹ Many of them are in mixed residential-commercial neighborhoods similar to those surrounding the Jennings Avenue crossing.¹⁰

When commenting on the City's *Draft Environmental Report*, Mr. Stewart gave no hint that the Jennings Avenue neighborhood could not qualify for an at-grade crossing, which was

⁶ *SED Comment*, p. 7.

⁷ RT 143:20-145:21; *Blue Line* D.02-05-047 (May 16, 2002), p. 17.

⁸ RT 214:3-24, CPUC Correspondence with Mayor Olivares dated Jan. 13, 2012.

⁹ See SCTLG Exhibits 2 through 8, and CPUC approval letters cited in SCTLG Response, p. 9-10, fn. 16.

¹⁰ See, *Jennings Avenue Crossing Final EIR*, Appendix G, pp. 19-29 showing comparable use of crossings at Jennings Ave. 6th, 7th, and 8th Streets by grade school children, and a more proximate school than at Jennings Ave. <http://srcity.org/departments/communitydev/Pages/JenningsAvenuePedestrianandBicycleRailCrossingEIR.aspx#FinalEIR>

the “preferred alternative” under consideration. He confined his substantive comments to noise issues, mentioned no specific safety concerns, and merely reiterated that the grade separated crossing was the, “best plan for ensuring that the public cross the tracks in a safe manner.”¹¹

When describing the preference for a grade-separated structure at the Public Participation Hearing in February 2016, the SED representative, rather than pointing to the residential character of the neighborhood stated: “RCEB staff believes that the walking public of Santa Rosa would be better served with a safer alternative such as a grade separated pedestrian crossing at Jennings Avenue.”¹² Counsel for SED stipulated during the evidentiary hearing in March 2016 that the crossing under consideration would meet all legal requirements.¹³ When asked at the evidentiary hearing why SED opposed an at-grade crossing, Mr. Stewart did not mention school children or the presence of retired people in the neighborhood. He testified that the main reason for the SED protest was: “. . . MTC [offered] the City \$8 million to build that structure. And then the City after all of that decided to not build the structure and go at grade. And so that is mainly my – the basis for my protest.”¹⁴

SED now asserts that the existence of a residential neighborhood is a significant issue regarding the safety of this crossing.¹⁵ However, all crossings are open to use by people of all ages and abilities and there is no statistical evidence in the record that youth, age, or disability causes people to be over-represented in crossing accidents.

The evidence establishes convincingly that the at-grade crossing is the safest alternative available to the City at this particular location.

¹¹ *Jennings Avenue Crossing Final EIR, supra*, Comment Letter #2 dated Nov. 26, 2014 by David Stewart.

¹² RT PPH 13:16-20

¹³ RT 91:22-27

¹⁴ RT 132:27-133:5

¹⁵ *SED Comment*, pp. 6-7. However, the failure of staff to concur in the safety of a crossing does not bar the Commission from determining that the crossing provides an adequate level of safety. *City of Bakersfield* D.04-08-013 (Aug. 19, 2004).

IV.

CONCLUSION

For the reasons stated above, the proposed decision is supported by the facts and by the relevant precedents.

Respectfully Submitted,

/s/ Stephen C. Birdlebough

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August 15, 2016